



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0803]**

**RIN 1625-AA11**

### **Regulated Navigation Area; Saint Simons Sound, GA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary regulated navigation area (RNA) for the navigable waters in Saint Simons Sound, GA, as set out in the regulatory text at the end of this document. Entry of vessels greater than 500 gross tons into this area is prohibited, unless specifically authorized by the Captain of the Port (COTP) Savannah. The RNA is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage and pollution response operations taking place near the grounded freight vessel GOLDEN RAY.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 29, 2021. For the purposes of enforcement, actual notice will be used from September 19, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0794 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Lauren Bloch, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone 912-652-4353, extension 232, or email Lauren.E.Bloch@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
RNA	Regulated Navigation Area
COTP	Captain of the Port
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the freight vessel GOLDEN RAY capsized and grounded in Saint Simons Sound, GA on September 8, 2019. Immediate action is needed to aid in the directing of vessel traffic through the Port of Brunswick in the vicinity of the M/V GOLDEN RAY. It is impracticable to publish an NPRM because we must establish this RNA by September 19, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective

date of this rule would be impracticable because immediate action is needed to respond to the potential hazards associated with operations in response to the M/V GOLDEN RAY casualty.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Savannah has determined that an RNA is needed to allow vessels greater than 500 gross tons to transit safely through the area. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the RNA during salvage and pollution operations in response to the M/V GOLDEN RAY casualty.

### **IV. Discussion of the Rule**

This rule establishes an RNA on September 19, 2019. The RNA will cover all navigable waters in Saint Simons Sound, GA bounded by a line drawn from a point located at 31°07'48.84" N, 081°23'30.67" W, thence to 31°07'29.38" N, 081°23'37.15" W, thence to 31°07'51.43" N, 081°16'23.57" W, thence to 31°08'07.28" N, 081°24'48.08" W, thence to 31°07'22.87" N, 081°24'38.78" W, thence to 31°07'40" N, 081°25'01" W. No vessel greater than 500 gross tons may enter the RNA without the prior approval of the COTP Savannah. Upon approval from the COTP each vessel will be provided an authorized timeframe to transit the RNA. Only one-way traffic is allowed through the RNA at all times. When transiting through the RNA all vessels greater than 500 gross tons must have one assist tug, establish and maintain communications with the designated representative of the COTP via VHF-FM radio on channel 13, and not exceed a speed of 8 knots, unless greater speeds are required to maintain bare steerage. Any vessel unable to meet these operating limitations may, with good cause, seek authorization from the COTP Savannah to deviate from these requirements.

The RNA is intended to protect personnel, vessels, and the marine environment in these navigable waters and provide a safe working environment for personnel and vessels responding to the M/V GOLDEN RAY casualty.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the RNA size, location, notice, duration and provided exceptions. Vessel traffic will be able to safely transit through this RNA which would impact a small designated area of Saint Simons Sound, GA; the size and location of this RNA is limited to an area in the immediate vicinity of the grounded M/V GOLDEN RAY. The Coast Guard will provide mariners notice of the RNA through a Broadcast Notice to Mariners via VHF-FM radio channel 16. Additionally, the RNA is limited in duration. It will remain in effect until the COTP Savannah determines the M/V GOLDEN RAY is no longer a hazard to the safety of persons and vessels transiting the area. Lastly, this RNA will allow vessels to seek permission

from the COTP to enter the area.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V. A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast

Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an RNA for the navigable waters in Saint Simons Sound, GA bounded by a line drawn from a point located at 31°07'48.84" N, 081°23'30.67" W, thence to 31°07'29.38" N, 081°23'37.15" W, thence to 31°07'51.43" N, 081°16'23.57" W, thence to 31°08'07.28" N, 081°24'48.08" W, thence to 31°07'22.87" N, 081°24'38.78" W, thence to 31°07'40" N, 081°25'01" W. It is categorically excluded from further review under paragraph L[60a] in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0803 to read as follows:

**§ 165.T07-0803 Regulated navigation area; Saint Simons Sound, GA.**

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of Saint Simons Sound, GA bounded by a line drawn from a point located at 31°07'48.84" N, 081°23'30.67" W, thence to 31°07'29.38" N, 081°23'37.15" W, thence to 31°07'51.43" N, 081°16'23.57" W, thence to 31°08'07.28" N, 081°24'48.08" W, thence to 31°07'22.87" N, 081°24'38.78" W, thence to 31°07'40" N, 081°25'01" W. All coordinates are North American Datum 1983 (NAD 83).

(b) *Definition.* As used in this section, *designated representative* of the Captain of the Port Savannah (COTP) is any Coast Guard commissioned, warrant or petty officer, or federal, state, local agency, who has been designated by the COTP Savannah to assist in the patrol or enforcement of the regulated area.

(c) *Regulations.* In addition to the general RNA regulations in § 165.13, the regulations in paragraphs (c)(1) through (8) of this section apply to the RNA described in paragraph (a) of this section.

(1) All vessels greater than 500 gross tons intending to transit through the RNA must



seek prior approval from the COTP Savannah at least 24-hours in advance of the vessel's arrival to, or departure from, the Port of Brunswick. The COTP Savannah can be contacted via telephone at 614-943-5532. The COTP Savannah's designated representative can be contacted on VHF-FM radio channel 13. Upon approval to enter the RNA, the COTP Savannah will provide an approved timeframe a vessel may enter the RNA.

(2) Only one-way traffic is authorized within the RNA at all times.

(3) All vessels greater than 500 gross tons must obtain one assist tug while transiting within the RNA.

(4) All vessels greater than 500 gross tons must check in with the designated representative via VHF-FM Channel 13 prior to transiting within the RNA and maintain communications with the designated representative while transiting through the RNA.

(5) While transiting within the RNA all vessels greater than 500 gross tons may not exceed a speed of 8 knots, unless greater speeds are required to maintain bare steerage.

(6) Any vessel unable to meet these operating limitations may, upon showing good cause, seek authorization from the COTP Savannah to deviate from the requirements in this section.

(7) The operator of any vessel transiting in RNA must comply with all lawful directions given by the COTP or the COTP's designated representative.

(8) The inland navigation rules in 33 CFR subchapter E remain in effect within the RNA and must be followed at all times.

Dated: September 19, 2019.

Eric C. Jones,  
Rear Admiral, U.S. Coast Guard,  
Commander, Seventh Coast Guard District.  
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